

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 1/13/00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Associated Grocers, Incorporated

Serial No. 75/287,214

Faye L. Tomlinson of Christensen O'Connor Johnson & Kindness PLLC
for Associated Grocers, Incorporated.

Teresa A. Lee, Trademark Examining Attorney, Law Office 111
(Craig Taylor, Managing Attorney).

Before Simms, Cissel and Hohein, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

An application has been filed by Associated Grocers,
Incorporated to register the mark "CR CONSUMER READY PRODUCTS"
and design, as reproduced below,

for "food products, namely meat" in International Class 29 and "wholesale distributorships in the field of food products" in International Class 35.¹

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its goods and services, so resembles the mark "CONSUMER READY," which is registered on the Supplemental Register for "pork,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Turning first to consideration of the respective goods and services, applicant admits that while its "broad category of food products, namely, meat and registrant's particular meat product, i.e., pork would be considered related," it nevertheless insists that its wholesale distributorships and the meat products sold therein would involve sales to "sophisticated and professional" purchasers rather than to ordinary consumers. In particular, applicant asserts that because the "relevant purchasers in Appellant's case are the various grocery store department buyers," such discriminating purchasers "are held to a higher standard when determining likelihood of confusion."

¹ Ser. No. 75/287,214, filed on May 5, 1997, which alleges a bona fide intention to use such mark in commerce. The words "CONSUMER READY PRODUCTS" are disclaimed.

² Reg. No. 2,064,210, issued on May 20, 1997, which sets forth dates of first use of November 5, 1993.

Applicant also maintains that, even if the relevant purchasers of the respective goods and services were to include ordinary consumers, there would essentially be no likelihood of confusion.

According to applicant:

If the purchaser of registrant's pork is the average grocery store customer, then no confusion exists since Appellant's purchasers are sophisticated grocery store department buyers and there is little overlap and where there is overlap, the overlap is comprised of the sophisticated purchasers. If instead registrant's goods also travel through wholesale channels, then the purchasers are also sophisticated, and in the grocery store environment are likely to be knowledgeable in the field of trademarks as well as knowledgeable in their field of purchase. The result is that any likelihood of confusion as to the source of Appellant's goods and services and registrant's goods remains remote.

We agree with the Examining Attorney, however, that due to the broad manner in which they are identified, applicant's goods and services, on the one hand, and registrant's products, on the other, are identical in part (inasmuch as "meat" obviously encompasses "pork") and are otherwise sufficiently related (since meat may be distributed through wholesale food product distributorships) that, if sold under the same or substantially similar marks, confusion as to their origin would be likely. As the Examining Attorney correctly points out, it is well settled that the issue of likelihood of confusion must be determined in light of the goods and/or services as set forth in the involved application and cited registration and, in the absence of any specific limitations therein, on the basis of all normal and

usual channels of trade and methods of distribution for such goods and/or services. See, e.g., CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and Paula Payne Products Co. v. Johnson Publishing Co., Inc., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). In consequence thereof, and contrary to applicant's contentions that its goods and services are marketed only through wholesale channels of trade while registrant's goods are exclusively sold prepackaged directly to consumers, applicant's goods and services and registrant's goods must be presumed to encompass all goods and services of the types described. We must also presume that such goods and services move in all normal channels of trade therefor, including, in the case of the respective goods, wholesale distributorships in the field of food products as well as retail grocery stores and supermarkets, and that the respective goods and services are available to all potential customers, including wholesalers as well as ordinary retail consumers. See, e.g., In re Elbaum, 211 USPQ 639, 640 (TTAB 1981).

Turning, therefore, to consideration of the respective marks, applicant concedes that a mark registered on the Supplemental Register, as is the case with registrant's mark, can "serve as a bar to registration." See, e.g., In re Clorox Co., 578 F.2d 305, 198 USPQ 337, 339-40 (CCPA 1978). Applicant insists, however, that "[t]he fact that a mark is registered on the Supplemental Register is ... strong evidence of the [lack of]

strength of the mark and therefore is critical in determining the scope of protection afforded to that trademark."

Specifically, applicant argues that, "in the present situation, registration of registrant's mark on the Supplemental Register combined with the fact that Appellant was required to disclaim the words 'Consumer Ready Products' in its application is evidence that the mark CONSUMER READY is descriptive" and thus the "scope of protection for [such] a descriptive mark is very narrow." Applicant further contends that, in view thereof, the addition to its mark of "a prominent design feature that includes additional letters and a logo" creates a mark which is distinguishable from registrant's mark. Viewing the respective marks in their entireties, applicant asserts that the "bold and distinctive" design feature of its mark precludes any likelihood of confusion, given the descriptiveness inherent in the words "CONSUMER READY" in both registrant's and applicant's marks.

We nevertheless are constrained to agree with the Examining Attorney that contemporaneous use of the respective marks would be likely to cause confusion as to source or sponsorship. As the Examining Attorney persuasively points out, not only do such marks share the identical terminology "CONSUMER READY," but

the addition of the term "PRODUCTS" in applicant's mark does not mitigate the confusing similarity since [the generic term] "PRODUCTS" essentially possesses no trademark value. Further, the presence of the letters "CR" in the proposed mark ... does not alleviate the confusion between the marks. Because consumers would readily perceive such lettering as the acronym for

"CONSUMER READY," "CR" would only serve to highlight the similarity amongst the marks.

Moreover, contrary to applicant's argument that the design feature of its mark is "bold and distinctive," the Examining Attorney has made of record numerous third-party registrations for marks which include a combination of circular and banner designs and which are registered for, inter alia, various food and beverage products. These third-party registrations are sufficient to establish that marks incorporating such designs have been commonly adopted and registered by many sellers in the field of food and beverage products and thus, even when boldly or prominently displayed as part of those marks, such designs can scarcely be said to be distinctive in and of themselves.

Instead, as is the case with applicant's "CR CONSUMER READY PRODUCTS" and design mark, customers and prospective purchasers of applicant's meat products and its wholesale distributorship services in the field of food products would regard the circular and banner design feature of such mark as simply a background or vehicle for the display of the literal elements of the mark, namely, the wording "CR CONSUMER READY PRODUCTS". Such wording, which consumers would use when calling for or asking about applicant's goods, is substantially identical in connotation to the words "CONSUMER READY" in registrant's mark for its pork, given the fact that in applicant's mark, the term "PRODUCTS" is generic and the letters "CR" would be readily understood as an acronym or initialism for the words "CONSUMER READY".

In consequence thereof, we find that when considered in their entirety, applicant's "CR CONSUMER READY PRODUCTS" and design mark and registrant's "CONSUMER READY" mark project the same basic overall commercial impression. Ordinary consumers, for example, could readily believe in view thereof that the meat which they encounter under applicant's "CR CONSUMER READY PRODUCTS" and design mark comes from the same source as the pork which they have seen sold or advertised under registrant's "CONSUMER READY" mark. Additionally, even among sophisticated and discriminating purchasers, such as buyers for retail grocery stores and supermarkets, it would still be the case that, while they might notice the differences between the respective marks, they could still reasonably believe that, for instance, registrant's "CONSUMER READY" pork is a private label brand offered by applicant through its "CR CONSUMER READY" and design brand of wholesale distributorships for food products, or that its "CR CONSUMER READY" and design brand meat is simply a different grade or quality of pork from the same supplier as registrant's "CONSUMER READY" pork. Confusion as to origin or sponsorship, therefore, is likely to occur from simultaneous use of the respective marks, notwithstanding the descriptiveness of the terminology "CONSUMER READY".

Decision: The refusal under Section 2(d) is affirmed.

R. L. Simms

R. F. Cissel

Ser. No. 75/287,214

G. D. Hohein
Administrative Trademark Judges,
Trademark Trial and Appeal Board